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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

THERESA BROOKE, a married woman
dealing with her sole and separate claim,

Plaintiff,

vs.

AJU HOTEL SILICON VALLEY LLC, a
Delaware limited liability company dba
The Westin San Jose,

Defendant.

Case No:

**COMPLAINT FOR DAMAGES,
DECLARATORY RELIEF AND
INJUNCTIVE RELIEF FOR
VIOLATIONS OF AMERICANS
WITH DISABILITIES ACT AND
UNRUH CIVIL RIGHTS ACT**

(JURY TRIAL DEMANDED)

Plaintiff alleges:

PARTIES

1. Plaintiff Theresa Brooke is a married woman currently residing in Pinal County, Arizona. Plaintiff is and, at all times relevant hereto, has been legally disabled, confined to a wheel chair, and is therefore a member of a protected class under the ADA, 42 U.S.C. § 12102(2), the regulations implementing the ADA set forth at 28 CFR §§ 36.101 et seq., the California Unruh Civil Rights Act. Plaintiff ambulates with the aid of a wheelchair due to the loss of a leg.

2. Defendant, AJU Hotel Silicon Valley LLC, owns and/or operates and does business as the hotel, The Westin San Jose located at 302 S. Market Street, San

1 Jose, California 95113. Defendant's hotel is a public accommodation pursuant to 42
2 U.S.C. § 12181(7)(A), which offers public lodging services.

3 **INTRODUCTION**

4 3. Plaintiff Theresa Brooke brings this action against Defendant, alleging
5 violations of Title III of the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et
6 seq., (the "ADA") and its implementing regulations and the California Unruh Civil
7 Rights Act ("Unruh"), California Civil Code §§51, 52.

8 4. Defendant operates a fancy hotel in downtown San Jose, California in the
9 heart of Silicon Valley. Defendant offers four different Suites to prospective patrons.
10 The three most opulent Suites, however, are not made accessible and not available for
11 disabled Americans to rent. Defendant has violated the ADA three separate times. First,
12 Defendant does not allow disabled Americans to rent the Penthouse Suite, which is the
13 most opulent Suite available at the hotel and boasts over 900 square feet of living space.
14 Defendant also provides no comparable choices for disabled persons to the Penthouse
15 Suite. Second, Defendant does not allow disabled Americans to rent the Palm Suite,
16 which boasts over 700 square feet of living space, views unavailable in other rooms and
17 opulent finishes such as a marble bathroom. Third, Defendant does not allow disabled
18 Americans to rent the Saint Claire Suite, which is the third most opulent Suite at the
19 hotel. Defendant does not provide comparable choices to any of these three suites.
20 Instead, Defendant reserves only a basic "one-bedroom suite" for disabled persons.
21 Defendant has violated the ADA, and by extension Unruh, three separate times, and
22 therefore Plaintiff seeks damages for three separate Unruh violations.

23 **JURISDICTION AND VENUE**

24 5. Jurisdiction in this Court is proper pursuant to 28 U.S.C. §§ 1331 and 42
25 U.S.C. § 12188. The Court has supplemental jurisdiction over the state law claims. 28
26 U.S.C. § 1367.

27 6. Plaintiff's claims asserted herein arose in this judicial district and
28 Defendant does substantial business in this judicial district.

1 7. Venue in this judicial district is proper under 28 U.S.C. § 1391(b) and (c)
2 in that this is the judicial district in which a substantial part of the acts and omissions
3 giving rise to the claims occurred.

4 **ALLEGATIONS COMMON TO ALL COUNTS**

5 8. Due to Plaintiff's many special needs, she requires the use of lodging
6 rooms that are accessible to her and have the standard accessibility features such as roll-
7 in showers, adequate spacing the furniture in the lodging room, grab bars surrounding
8 the toilet, and other commonly-accepted accessibility features. Plaintiff also seeks
9 equality in the selection of the same type of lodging rooms that are available to able-
10 bodied persons.

11 9. In anticipation of a trip to the South Bay earlier this year, Plaintiff wanted
12 to rent a room at Defendant's hotel – the so-called "Studio King" room. Defendant
13 viewed this room on Defendant's website, which indicated that the "Studio King" room
14 is not an accessible room and not available for disabled Americans. Plaintiff thereafter
15 sued Defendant for a violation of the ADA. *See Brooke v. AJU Hotel Silicon Valley*
16 *LLC*, N.D. Cal. no. 5:19-cv-411-SVK (the "Current Litigation").

17 10. Please see Exhibit 1 for a screenshot of the room description of the Studio
18 King room, which shows that room is not offered as an accessible room.

19 11. During the Current Litigation, Defendant's counsel indicated that there
20 was no remediation needed; that the Studio King in fact was available as accessible,
21 contrary to what the hotel's website stated.

22 12. Therefore, Plaintiff wanted to lodge at the hotel. She and her husband
23 planned on lodging at the hotel on Labor Day weekend.

24 13. In anticipation of her trip, Plaintiff went back to Defendant's website to
25 rent the Studio King room but also with a motivation to test accessibility of other room
26 types. She went to Defendant's website to rent Defendant's Penthouse Suite, which is a
27 suite room that offers additional amenities and luxuries than standard rooms and is 900
28 square feet in size. However, Defendant does not make the Penthouse Suite available

1 that is ADA accessible. Defendant only offers the Penthouse Suite for able-bodied
2 persons. Therefore, Plaintiff was unable to rent that room. Please see Exhibit 2 for the
3 screenshot of the description of the Penthouse Suite.

4 14. Plaintiff sought to rent a comparable suite. She took a look at the Saint
5 Claire Suite, which also offers more space (539 square feet) and amenities than other
6 suites and standard rooms. However, again, the Saint Claire Suite is not offered as
7 accessible, only non-accessible to able-bodied persons. Please see Exhibit 3 for the
8 screenshot of the description of the Saint Claire Suite.

9 15. Plaintiff was already deterred from renting one of the suites but conducted
10 further research. She discovered that there are two other suites at the hotel. There is the
11 Palm Suite, which his 739 square feet and offers many more amenities than standard
12 rooms and other suites, including a marble bathroom. This Suite, too, is not an
13 accessible room. It is only available for able-bodied persons. Please see Exhibit 4 for
14 the screenshot of the description of the Palm Suite.

15 16. Upon further research, there is one additional suite, the One-Bedroom
16 Suite. This suite is offered in an accessible option, but Plaintiff wanted to rent one of
17 the more opulent suites whether that was the Palm Suite, Saint Claire Suite or the
18 Penthouse Suite. Those suites offer much more space than the one-bedroom suite, offer
19 better views than the one-bedroom suite, and offer nicer finishes.

20 17. Defendant does not offer a comparable Suite to the Penthouse Suite that is
21 accessible.

22 18. Defendant does not offer a comparable Suite to the Palm Suite that is
23 accessible.

24 19. Defendant does not offer a comparable Suite to the Saint Claire Suite that
25 is accessible.

26 20. Defendant is in violation of the ADA as to each of the three suites
27 mentioned above. Defendant operates a hotel that does not provide equality in terms of
28 choice for disabled persons at the hotel. Indeed, it would be similarly unequal if

1 Defendant did not offer particular Suites to African-Americans, women or Hispanics.
2 The same applies here; Defendant does not offer the most opulent suites to disabled
3 Americans. Disabled persons are just as protected by the United States Constitution as
4 African-Americans, women or Hispanics.

5 21. Defendant violates the ADA by not providing equal opportunities to
6 disabled Americans as it does for able-bodied persons. The violation of the ADA is
7 separate and apart from a violation of the 2010 Standards.

8 22. Defendant also violates Section 224.5 of the 2010 Standards of
9 Accessible Design in that Defendant does not provide comparable room choices for
10 each of the three Suites mentioned above.

11 23. Once again, Plaintiff is deterred from returning to the hotel. It is
12 unknown, due to the chicanery involved in the prior litigation, whether in fact
13 remediation has taken place for the Studio King. Therefore, Plaintiff will not return
14 unless and until she is provided actual proof that Defendant has remediated the Studio
15 King and the three Suites discussed herein.

16 24. Plaintiff has actual knowledge of three barriers at Defendant's hotel.
17 Plaintiff never took the trip to San Jose this past weekend because her grandfather
18 became terminally ill; however, she will make up that trip for purposes of testing but is
19 deterred from lodging at Defendant's hotel. If and when Defendant finally makes its
20 hotel fully accessible and equal, Plaintiff will visit the hotel on her many testing trips or
21 for attending settlement conferences or site inspections.

22 25. Section 224.5 of the 2010 Standards of Accessible Design requires that
23 hotels "shall provide choices of guest rooms, number of beds, and other amenities
24 comparable to the choices provided to other guests." Defendant does not provide a
25 comparable and accessible choice to the three Suites discussed above. The one-bedroom
26 suite is not comparable to the Palm Suite, Saint Claire Suite or Penthouse Suite.

27 26. Had Defendant provided equality and allowed Plaintiff the same choices
28 as able-bodied persons, which is required by Section 224.5 of the Standards, Plaintiff

1 would have booked a room although she could not have visited because of the
2 emergency to her grandfather.

3 27. Plaintiff's injury is a continuing one in two respects. First, she is deterred
4 from lodging at the hotel due to her knowledge of the barrier at the hotel. It is futile for
5 her to visit the hotel and check for compliance and/or lodge at the hotel if the barriers
6 remain. Second, she plans to visit the hotel if and when she receives notice that the
7 barrier, which denies her full and equal access to the facility, is cured.

8 28. Plaintiff and other disabled persons have been injured by Defendant's
9 discriminatory practices and failure to remove architectural barriers. These injuries
10 include being deterred from using Defendant's hotel due to the lack of room choice
11 similar to choice for able-bodied persons.

12 29. Without injunctive relief, Plaintiff and others will continue to be unable to
13 independently use Defendant's hotel in violation of her rights under the ADA.

14 30. Other potential violations and barriers to entry at Defendant's hotel may
15 be discovered through an expert inspection of the hotel property pursuant to Rule 34. So
16 as to avoid piecemeal litigation to ensure full access to the entirety of the property at
17 issue, Plaintiff will amend her complaint to allege and all additional barriers discovered
18 during the Rule 34 inspection. *Doran v. 7-Eleven*, 524 F.3d 1034 (9th Cir. 2008).

19 **FIRST CAUSE OF ACTION**
20 **(Violation of Title III the Americans with Disabilities Act)**

21 31. Plaintiff incorporates all allegations heretofore set forth.

22 32. Defendant has discriminated against Plaintiff and others in that it has
23 failed to make its public lodging services fully accessible to, and independently usable
24 by, individuals who are disabled in violation of 42 U.S.C. § 12182(a) and §
25 12182(b)(2)(iv) and the 2010 Standards, as described above.

26 33. Defendant has discriminated against Plaintiff in that it has not provided
27 Plaintiff equal choice among the room types at the hotel in violation of 42 U.S.C.
28 §12182(b)(A)(iv) and the 2010 Standards, as described above. Compliance with the

1 requirements of section 224.5 of the 2010 Standards would neither fundamentally alter
2 the nature of Defendant's lodging services nor result in an undue burden to Defendant,
3 as altering a non-accessible room to an accessible room is a simple endeavor that does
4 not require structural construction.

5 34. Compliance with 42 U.S.C. § 12182(b)(2)(A)(iv) and the 2010 Standards,
6 as described above, is readily achievable by the Defendant due to the low costs of
7 modifying a non-accessible room. Readily achievable means that providing access is
8 easily accomplishable without significant difficulty or expense.

9 35. Defendant's conduct is ongoing, and, given that Defendant has never fully
10 complied with the ADA's requirements that public accommodations make lodging
11 services fully accessible to, and independently usable by, disabled individuals, Plaintiff
12 invokes her statutory right to declaratory and injunctive relief, as well as costs and
13 attorneys' fees.

14 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 15 a. A Declaratory Judgment that at the commencement of this action
16 Defendant was in violation of the specific requirements of Title III of the
17 ADA described above, and the relevant implementing regulations of the
18 ADA, in that Defendant took no action that was reasonably calculated to
19 ensure that its lodging rooms were equally distributed to disabled persons;
- 20 b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if
21 applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2)
22 and 28 CFR § 36.504(a) which directs Defendant to take all steps
23 necessary to bring its lodging rooms into full compliance with the
24 requirements set forth in the ADA, and its implementing regulations, so
25 that the lodging rooms are fully accessible to, and independently usable
26 by, disabled individuals, and which further directs that the Court shall
27 retain jurisdiction for a period to be determined after Defendant certifies
28 that its lodging rooms are fully in compliance with the relevant

requirements of the ADA to ensure that Defendant has adopted and is following an institutional policy that will in fact cause Defendant to remain fully in compliance with the law;

- c. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, payment of costs of suit;
- d. Irrespective of Defendants “voluntary cessation” of the ADA violation, if applicable, payment of attorneys’ fees pursuant to 42 U.S.C. § 12205, 28 CFR § 36.505 and other principles of law and equity and in compliance with the “prevailing party” and “material alteration” of the parties’ relationship doctrines; and,
- e. Order closure of the Defendant’s place of public accommodation until Defendant has fully complied with the ADA; and
- f. The provision of whatever other relief the Court deems just, equitable and appropriate.

SECOND CAUSE OF ACTION
(Violation of the California Unruh Civil Rights Act, Cal. Civ. Code §§51, 52)

36. Plaintiff realleges all allegations heretofore set forth.

37. Defendant has violated the Unruh by denying Plaintiff equal access to its public accommodation on the basis of her disability as outlined above.

38. Unruh provides for declaratory and monetary relief to “aggrieved persons” who suffer from discrimination on the basis of their disability.

39. Plaintiff has been damaged by the Defendant’s non-compliance with Unruh.

40. Pursuant to Cal Civ. Code §52, Plaintiff is further entitled to such other relief as the Court considers appropriate, including monetary damages in an amount to be proven at trial, but in no event less than \$12,000.00 (\$4,000.00 for each of the three violations mentioned above).

1 41. Pursuant to Unruh, Plaintiff is entitled to attorney's fees and costs in an
2 amount to be proven at trial.

3 WHEREFORE, Plaintiff demands judgment against Defendant as follows:

- 4 a. A Declaratory Judgment that at the commencement of this action
5 Defendant was in violation of the specific requirements of Unruh; and
6 b. Irrespective of Defendants "voluntary cessation" of the ADA violation, if
7 applicable, a permanent injunction pursuant to 42 U.S.C. § 12188(a)(2)
8 and 28 CFR § 36.504(a) which directs Defendant to take all steps
9 necessary to bring its lodging rooms into full compliance with the
10 requirements set forth in the ADA, and its implementing regulations, so
11 that the lodging rooms are fully accessible to, and independently usable
12 by, disabled individuals, and which further directs that the Court shall
13 retain jurisdiction for a period to be determined after Defendant certifies
14 that its lodging rooms are fully in compliance with the relevant
15 requirements of the ADA to ensure that Defendant has adopted and is
16 following an institutional policy that will in fact cause Defendant to
17 remain fully in compliance with the law;
18 c. Irrespective of Defendants "voluntary cessation" of the ADA violation, if
19 applicable, payment of costs of suit;
20 d. Irrespective of Defendants "voluntary cessation" of the ADA violation, if
21 applicable, payment of attorneys' fees pursuant to 42 U.S.C. § 12205, 28
22 CFR § 36.505 and other principles of law and equity and in compliance
23 with the "prevailing party" and "material alteration" of the parties'
24 relationship doctrines; and,
25 e. Order closure of the Defendant's place of public accommodation until
26 Defendant has fully complied with the Unruh; and
27 f. For damages in an amount no less than \$12,000.00; and
28

1 g. The provision of whatever other relief the Court deems just, equitable and
2 appropriate.

3 **DEMAND FOR JURY TRIAL**

4 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby
5 demands a jury trial on issues triable by a jury.

6
7 RESPECTFULLY SUBMITTED this 4th day of September, 2019.

8
9 /s/ P. Kristofer Strojnik

10 P. Kristofer Strojnik (242728)

11 Attorneys for Plaintiff

12 **VERIFICATION COMPLIANT WITH R10-3-405**

13 I declare under penalty of perjury that the foregoing is true and correct.

14 DATED this 4th day of September, 2019.

15
16 
17 Theresa Brooke